

DECISION



31505
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219096

DATE: June 20, 1985

MATTER OF: Alan Scott Industries

DIGEST:

1. Protest that awardee's bid price is below the cost of supplying a product in conformity with the specifications is dismissed. Submission of a below-cost bid does not in itself provide a basis for precluding award and GAO does not consider allegations that a bid price is so low that the bidder will be unable to perform satisfactorily, i.e., challenges to an affirmative determination of the bidder's responsibility, in the absence of a showing of fraud or bad faith or that definitive responsibility criteria were not met.
2. Unsupported allegation that bid may be nonresponsive is regarded as speculation and will not be considered.
3. GAO does not conduct independent investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. Rather, the protester has the burden of affirmatively proving its case.

Alan Scott Industries (Scott) protests the award of a contract to Columbia Surgical Instruments, Inc. (Columbia), under invitation for bids No. DLA120-84-B-3010, issued by the Defense Logistics Agency for the supply of forceps. Scott alleges that the price bid by Columbia does not cover the cost of producing the forceps in accordance with the specifications. It questions whether Columbia's offer is responsive to the specifications and requests that we undertake an investigation in this regard. We dismiss the protest.

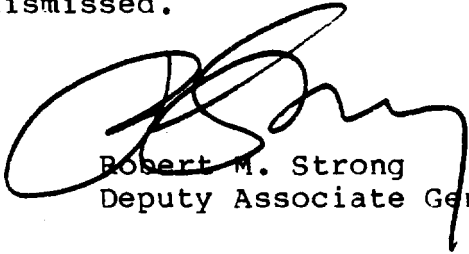
In regard to Scott's allegation that Columbia's bid price is below the cost of producing the forceps in conformity with the specifications, we note that submission of a below-cost bid is not illegal and the government cannot withhold award merely because a responsive bid is below

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cost. Whether a low price is so low that the bidder will be unable to perform the contract satisfactorily is a question concerning the bidder's responsibility. Libby Corporation, B-218367.2, Apr. 10, 1985, 85-1 C.P.D. ¶ 412; Ambulancias de Emergencias, Inc., B-216936, Nov. 26, 1984, 84-2 C.P.D. ¶ 562. Our Office, however, does not consider protests concerning affirmative determinations of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. Libby Corporation, B-218367.2, *supra*, 85-1 C.P.D. ¶ 412 at 2; 4 C.F.R. § 21.3(f)(5) (1985). Neither exception is alleged here.

As for Scott's belief that Columbia's bid may be nonresponsive, we note that Scott has failed to submit any evidence that Columbia in fact did not unequivocally offer to provide the requested items in total conformance with the material terms of the solicitation. See John C. Grimberg Company, Inc., B-218231, Mar. 12, 1985, 85-1 C.P.D. ¶ 305. Moreover, we further note that our Office does not conduct independent investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. William A. Stiles, III--Reconsideration, B-215922.3, Feb. 19, 1985, 85-1 C.P.D. ¶ 208. Instead, the protester has the burden of affirmatively proving its case. See San Diego Aircraft Engineering, Inc., B-217208, Mar. 25, 1985, 85-1 C.P.D. ¶ 347. Scott's unsupported belief does not meet this burden and we regard it as mere speculation, which we will not consider on the merits. See R. P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 C.P.D. ¶ 39.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel